this Ordinance it has power, to order part of the royalties received under the lease to be applied to any of the four capital pruposes prescribed in that section.

In the present case the Public Trustee seeks authority to grant leases over an area of 15 acres on terms indicated in a document containing Heads of Agreement exhibited to his affidavit, and directions as to the application of the royalties received from such leases as between life-tenants and remaindermen. As I have already said this was an open mine at the time of the testator's death and has been an open mine ever since and therefore it seems to me proper that the Public Trustee should be authorised by the Court to grant leases on the terms indicated in the Heads of Agreement to ensure its continued working. For the reasons I have mentioned, I am satisfied that the Court has power to direct that part of the royalties received from such leases should be applied to capital purposes and since the usual proportion where the amounts are prescribed by statute in England is one fourth for capital purposes and three quarters for the life-tenants, where the lease is of an open mine, I think it would be appropriate if I order that in this case one quarter of the royalties should be applied to the capital purposes prescribed in section 27 of the Settled Estates Ordinance. The parties will have liberty to apply to the Court from time to time for the purpose of obtaining further detailed directions for carrying out this order.

In addition to seeking authority for the grant of mining leases, the Public Trustee also asks for authority to grant building leases for a term of seventy years on that part of the Gulega Bedok Estate which has a frontage on Changi Road and Bedok Road. This application was supported by counsel for the life-tenants and by counsel for the remaindermen and I am satisfied, after considering the evidence on the matter, that it would be proper and in the interests of all concerned to authorise such building leases. The whole of the rents received from such leases should be paid to the life-tenants.

The costs of all parties to these proceedings as between solicitor and client, will come out of the trust estate.

Order accordingly.

Solicitors : *de Souza & de Souza; Wee Swee Teow & Co.*

Re TAN TYE DECD.; ESTATE & TRUST AGENCIES (1927) LTD. v. TAN LIAN CHYE & ORS.

[O. C. J. (Chua J.) April 25, 1957]

[Singapore — Originating Summons No. 147 of 1956]

Trust — Prohibition in will of sale of immovable property — Jurisdiction of Court to approve sale — Scope of the Court's jurisdiction — Opposition of beneficiaries to sale — Trustees Ordinance (Cap. 34), s. 56.

This Originating Summons was taken out in the Matter of the Trusts of the Will of Tan Tye deceased, the plaintiffs (a Trust Company) being the Trustees and the defendants being parties interested under the will to the income of the estate. The Summons asked for an order, (a) that the plaintiffs be at liberty to sell the land and premises of the estate consisting of two pieces of land situate in the District of Geylang (hereinafter referred to as the Trust Property), containing 4 acres 2 roods 16 poles and 2 acres 3 roods 36 poles respectively, for the sum of $2,000,000 and for that purpose to confirm the provisional agreement for sale dated the 19th day of November 1956 entered into between the plaintiffs and Happy World Limited (hereinafter referred to as the Agreement); (b) that, in the event of the above order being granted, the costs of all parties be taxed as between solicitors and clients and paid out of the proceeds of sale, or out of the estate; (c) that the net proceeds be invested by the plaintiffs in the purchase of immovable property in Singapore or in the security of freehold or leasehold property in Singapore in accordance with directions as to investment expressed in the said Will; (d) that the plaintiffs be paid a remuneration for their work in connection with and incidental to the said sale to be fixed by the Court out of the proceeds of sale.

The said Tan Tye (hereinafter called the Testator) made his will dated May 13, 1896 and after making certain bequests gave the residue to his trustees to hold upon the trusts therein stated. The trustees were directed, after applying the income for certain specified purposes, to divide the balance of the income into ten equal shares and to pay one such share equally among the Testator's children, grandchildren and nephews named in the will. The trustees were directed to apply the property and the income thereof "upon the trusts aforesaid until the expiration of the period of twenty-one years from the decease of the survivor of such of my children and grandchildren and my abovenamed nephews as shall be living at my decease. At the expiration of which period subject to the trusts aforesaid I direct my trustees or trustee to divide the whole of my property among all such of my male issue (not including adopted male) as shall then be living in equal shares *per capita*." The Will not only did not give the trustees power to sell immovable property but expressly prohibited such sale until the date of distribution.

The last surviving life whereby the period of the Trusts was limited was the first defendant, Tan Lian Chye, a son of the Testator, who was a very old man. Twenty-one years after the death of Tan Lian Chye, the Trust Property must be sold and the proceeds divided according to the Trusts. Part of the property comprised

in the residuary bequest of the Testator consisted of the Trust Property. On August 5, 1936 the then trustees leased the Trust Property to George E. Lee for a term of 20 years 10 months at a progressive rental commencing at $100 p.m. and culminating in a rental of $800 p.m. The lease would expire on May 31, 1957 and it was one of the terms of the lease that at the expiry of the lease the lessee was to surrender the land with all the buildings and structures thereon to the lessor. On October 2, 1936 George E. Lee, with the permission of the then trustees previously obtained, assigned all his rights under the lease to Happy World Limited (hereinafter referred to as the Company). George E. Lee was to all intent the owner of the Company. The Company had combined its adjoining lands with the Trust Property to make an amusement park known as the "Happy World." Two-thirds of the Happy World was the Trust Property.

On July 11, 1955 the Company commenced an action, being Suit No. 989 of 1955, against Estate and Trust Agencies (1927) Limited, the present trustees of the Will of Tan Tye deceased as defendants (hereinafter called the Trustees in this paragraph), for:— "(a) a declaration that the Trust Property together with the buildings erected thereon constitute "Premises" within the meaning of the definition clause of the Control of Rent Ordinance, 1953; (b) a declaration as to the maximum sums which it was legal for the Trustees as landlords of the land to receive as rent thereof for the periods: (i) 1st August 1939 to 30th June 1942, (ii) 1st July 1942 to 30th June 1947, (iii) 1st July 1947 to 30th June 1952, (iv) 1st July 1952 to the commencement of the action; (c) an order that the Trustees do refund to the Company pursuant to section 3(4) of the Control of Rent Ordinance all sums which the Company has paid to the Trustees or the former trustees by way of rent of the Trust Property, in excess of the rents which the Trustees or former trustees were lawfully entitled." The action, Suit No. 989 of 1955, was part heard. The plaintiffs and the Company came to the conclusion that some settlement should be arrived at and negotiations took place. On November 19, 1956 the plaintiffs and the Company entered into an agreement whereby the Company agreed, subject to the approval of the Court, to purchase the Trust Property for the sum of $2,000,000 and this was the agreement which the plaintiffs wanted the Court to approve.

By an order of Court dated the 7th December 1956 George John Okell was appointed "to represent the class of male issue of the Testator born or to be born who shall be living at the expiration of twenty-one years from the death of the last survivor of the nephews and sons of the Testator named in the said will and entitled on the distribution of the estate."

At the hearing of this Summons all the defendants were represented by Counsel except the 4th Defendant who did not enter an appearance.

The application of the plaintiffs was strongly opposed by Mr. Okell and all the defendants who appeared except the 11th Defendant, Estate and Trust Agencies (1927) Limited. All the defendants except the 1st Defendant, Tan Lian Chye, were administrators of various estates. The opposition to the application was on two grounds: (a) that the Court had no jurisdiction to approve the sale, and (b) if the Court had jurisdiction this sale was not one which the Court should approve.

Held: (1) the Court has power to approve the agreement under its inherent jurisdiction if there is an emergency and under section 56 of the Trustees Ordinance;

(2) in the present case where a majority of the beneficiaries of the trust oppose the sale of the trust property, the Court should not approve the agreement for sale;

(3) the inherent jurisdiction of the Court to approve a sale in an emergency is one to be exercised with caution and in the circumstances of this case, the agreement should not be approved.

Cases referred to:—

(1) *In re New* (1901) 2 Ch. 534.

(2) *In re Downshire Settled Estates* (1953) Ch. 218.

(3) *In re Mair* (1935) 1 Ch. 562.

(4) *In re Beale's Settlement Trusts* (1932) 2 Ch. 15.

ORIGINATING SUMMONS.

H. E. Cashin for the plaintiffs.

C. H. Withers-Payne (*A. B. Schofield* with him) for 1st, 3rd, 5th, 6th, 7th, 8th, 12th, 14th and 15th defendants.

P. F. X. Leonard for 2nd, 9th, 10th and 13th defendants.

G. J. Okell for residuary beneficiaries.

Chua J. (dealt with the facts as reproduced in the head-notes above, and continued): — The plaintiffs' case, as far as I understand it, is as follows:—

The Lease will expire at the end of May 1957 whatever may be the result of Suit No. 989 of 1955. If the Company succeeds in that suit the Estate will be called upon to refund a considerable sum of money (there is no evidence how much this sum will be) and the sun that can be collected by way of rent will be reduced and the rent will be controlled for as long as the Control of Rent Ordinance is in force. If the plaintiffs succeed in getting possession of the Trust Property the result will be that the plaintiffs will have to run an amusement park business which under the Will they are not empowered to do and furthermore it would be risking the capital of the trusts unduly. The plaintiffs say that an emergency has arisen which they have to face at the end of May 1957 when the Lease expires and they are in a dilemma and they have to do what is best for the Estate. The plaintiffs have considered the possibility of a further lease. Their first approach was to the present tenant, the Company. As Tan Lian Chye is a very old man, the plaintiffs do not feel justified in granting a further lease exceeding 21 years. The Company, however, is not interested in a further lease of 21 years and any other short lease. The plaintiffs considered that no worth while offer will be made by other prospective lessees as one-third of the area of the Happy World is land belonging to the Company. The plaintiffs also considered the question of sale. Here again they say they faced several problems namely (a) The Trust Property is worth a considerable sum and there are very few persons who are in the position to buy it; (b) There is a sitting tenant who owns one-third of the area of the Happy World; and (c) The area is marked as an amusement park under the Master Plan and it will be

difficult to change it. The plaintiffs feel that only those in the same line of business as the Company will be interested and they are very few. The Company made an offer to purchase the Trust Property for $2,000,000 and in that offer pointed out that a number of improvements, required to be done by the public authorities, have to be carried out at an estimated cost of $830,000. The plaintiffs say that they cannot carry out such improvements as they do not have the money. The plaintiffs made enquiries and found out that two pieces of land adjoining the Happy World were sold in 1954 for approximately $3.52 per sq. ft. The plaintiffs say that the stalls erected on the Trust Property are not worth much. The restaurants and cinemas on the Trust Property unless large sums are put out to renovate them will not be licensed by the public authorities. The plaintiffs are afraid to wait for the result of the action, Suit No. 989 of 1955, before accepting the Company's offer as the Company might withdraw its offer if the plaintiffs win or if there is a delay in accepting the offer and the plaintiffs will be in an impossible position. The plaintiffs consider that $2,000,000 is the highest price obtainable under the circumstances and they cannot imagine of anyone else being interested in the property. The plaintiffs say that they knew that certain beneficiaries have opposed the sale of the Trust Property but they felt that something must be done to get out of the dilemma and so they entered into the Agreement.

It is not disputed that the plaintiffs did not get any valuation of the Trust Property with or without the buildings on it. The plaintiffs did ask two valuers to value the Trust Property as a going concern and both the valuers stated that they were unable to give such a valuation.

On the question of the jurisdiction of the Court to approve the sale the plaintiffs contend that an emergency has arisen and the Court has power under its inherent jurisdiction to approve the sale and it also has power under section 56 of the Trustees Ordinance (Cap. 34). The plaintiffs maintain that the Court can exercise this power in the face of the opposition of even all the beneficiaries. The following cases were cited by the plaintiffs in support of their contentions: *In re New*[1]; *In re Downshire Settled Estate*[2]; *In re Mair*[3] and *In re Beale's Settlement Trusts*[4]. Section 56 of the Trustees Ordinance is similar to section 57 of the Trustees Act, 1925.

So much for the plaintiffs' case.

The arguments of the defendants who opposed the application and Mr. Okell (who opposes only on the ground that the Trust Property should not be sold and not on the ground that the Court has no jurisdiction) may be summed up as follows:—

(A) The Court has no jurisdiction to approve the Agreement on the ground (i) that the application is misconceived and should have been brought under the relevant provisions of the Settled Estates Ordinance (Cap. 20) as the will of the Testator is a settlement; (ii) that the Agreement contravenes section 11(2) of the Trustees Ordinance in that more than two-thirds of the purchase price will be left outstanding on a mortgage; (iii) that no emergency has arisen and that a majority of the beneficiaries has opposed the sale and therefore the Court has no inherent jurisdiction to approve the sale; (iv) that as the plaintiffs can make their application under the Settled Estates Ordinance they cannot invoke section 56 of the Trustees Ordinance.

(B) If the Court has jurisdiction the Court should not exercise its discretion in approving the Agreement on the following grounds:

(i) There is a direct prohibition in the Will of the sale of immovable property. No one wants the sale except the plaintiffs who have no beneficial interest in the Trust Property. The Trust Property should not be sold at all. In time, due to the development of the area, the Trust Property will appreciate in capital value. The worst that can happen if the Company wins the action is that the income of the Trust Property will become less but the land will not disappear and will increase in value. In fact there is every likelihood that the plaintiffs will succeed against the Company.

(ii) The price of $2,000,000 is inadequate. In 1954 neighbouring land was sold for $3.52 per sq. ft. Basing the Trust Property on that price the Trust Property, without the buildings on it, is worth slightly less than $1,200,000. The present value of the Trust Property must be more than $3.52 sq. ft. due to the development of the area. The Trust Property, however, is not vacant land, it has substantial buildings on it — stadium, restaurants, cabaret, cinemas, stalls, etc. The buildings have not been valued. The Court is being asked to approve the sale without the assistance as to the value of the Trust Property and the buildings thereon. The purchase price of $2,000,000 is to be paid by instalments of $500,000 on the expiry of the Lease and $100,000 every six months for seven years The buildings on the Trust Property produce an income of about $30,000 per month (which is not disputed by the plaintiffs) which means that the instalments of $100,000 every six months will be paid from the income of the Trust Property and the Company will really be getting the Trust Property for $600,000 or $700,000.

(iii) By the terms of the Will the trustees are authorised to carry on the business of timber merchant carried on by the Testator and furthermore the trustees are also empowered to deal with the immovable property of the Testator as if they were beneficially interested

therein save only that they should not sell or encumber the same. It is arguable, therefore, that such power so to deal with the immovable properties might amount to authority to carry on business thereon. It is feasible and practical to carry on an amusement park on the Trust Property notwithstanding that part of the Happy World is erected on land belonging to the Company. The Happy World was at first carried on wholly on the Trust Property and it was only recently that the amusement park was extended beyond the boundaries of the Trust Property. The improvements which the Company said are required by the Public authorities are not entirely necessary and they could be effected over a protracted period of time out of the profits of the amusement park. In any case much of the said improvements would be done by the tenants of the various buildings at their own expense if such tenants were assured fixity of tenure. Such tenants have already effected very considerable repairs and alterations and improvements at their own expense.

The plaintiffs explain that the Agreement does not envisage completion until the last payment is made and no legal estate would pass until then. The Agreement was drawn with section 11(2) of the Trustees Ordinance in mind and with the purpose of avoiding a mortgage. It did not leave two-thirds of the purchase price outstanding. If there is default in the payment of one instalment the whole amount outstanding would become due. The ownership of the land remains in the plaintiffs although possession goes to the Company and no provision of the law has been contravened.

There are, therefore, two questions for me to decide (a) have I jurisdiction to approve the Agreement? and (b) if I have jurisdiction, how should I exercise my discretion?

On the first question, I am satisfied from the cases of *In re New*[1] and *In re Downshire Settled Estates*[2] that the Court has power to approve the Agreement under (i) its inherent jurisdiction, if there is an "emergency" and (ii) section 56 of the Trustees Ordinance.

In the case of *In re Downshire Settled Estates*[2], the Master of the Rolls (Sir Raymond Evershed) said (at page 234):—

"In our judgment (but without departing from the principle stated in our first general observation above) the inherent jurisdiction, or the aspect of the jurisdiction invoked in In re New[1] and sought to be invoked in these appeals, is of a more limited character. It is a power or jurisdiction to confer upon trustees, quoad items of trust property vested in them, administrative powers to be exercised by them as the persons in whom the property is vested (notwithstanding that such powers were not conferred by the trust instrument) where a situation has arisen in regard to the property (particularly a situation not originally foreseen) creating what may be fairly called an 'emergency' — that is a state of affairs which has to be presently dealt with, by which we do not imply that immediate action then and there is necessarily required — and such that it is for the benefit of everyone interested under the trusts that the situation should be dealt with by the exercise of the administrative powers proposed to be conferred for the purpose. The power or jurisdiction does not, in our view, extend to changes or re-arrangements of the beneficial interests *inter se* under the trust, as distinct from re-arrangements or reconstructions of the trust property itself."

The only way in which the proposed sale of the Trust Property can be brought within the inherent jurisdiction of the Court and section 56 of the Trustees Ordinance is for the plaintiffs to show that an emergency has arisen and that the sale is one which will be beneficial to all parties interested and that the sale is expedient.

I entirely agree with the plaintiffs that an emergency has arisen and that they are embarrassed by the emergency and also by the duty which is upon them to do what is best for the estate.

I next come to the second question: How should I exercise my discretion?

The scope of the Court's inherent jurisdiction is clearly set out in the judgment of Romer L.J., in *In re New*[1], where he said (at page 545):—

"Of course, the jurisdiction (inherent jurisdiction) is one to be exercised with great caution, and the Court will take care not to strain its powers. It is impossible, and no attempt ought to be made, to state or define all the circumstances under which, or the extent to which, the Court will exercise the jurisdiction; but it need scarcely be said that the Court will not be justified in sanctioning every act desired by trustees and beneficiaries merely because it may appear beneficial to the estate; and certainly the Court will not be disposed to sanction transactions of a speculative or risky character. But each case brought before the Court must be considered and dealt with according to its special circumstances."

I think the word "expedient" in section 56 of the Trustees Ordinance means expedient for the trust as a whole.

Neither the plaintiffs nor the defendants can say with certainty what the outcome of the action, Suit No. 989 of 1955, will be. The plaintiffs themselves say that they feel that the chances of winning it are on their side and this is what the defendants also think. Practically all the defendants are prepared to receive a reduced income in the event of the Company succeeding. Would it not be better under these circumstances to wait for the result of the action before deciding to sell the Trust Property? I am doubtful if a sale now of the Trust Property is to the best advantage of the beneficiaries. The Trust Property, with the buildings on it, if sold by public tender as a going concern when the plaintiffs have obtained possession will probably fetch more than $2,000,000. The Company, I am sure, cannot run a rival amusement park on its own land as it is too small.

I do not, however, agree with the defendants that the plaintiffs can carry on the business of an amusement park because I think the plaintiffs are not authorised by the Will to carry on such a business and furthermore

such a business is highly speculative but I don't think there is anything to prevent the plaintiffs at the expiration of the Lease and if they get possession to enter into separate leases or tenancies with the present sub-tenants or licensees such as the Happy Cabaret & Co., Ltd., the Tai Thong Restaurant Ltd., and others and thereby collecting substantial rentals.

I also asked myself the question: Should I sanction the sale in the face of the strong opposition of practically all the defendants and Mr. Okell? The plaintiffs cited the case of *In re Beale's Settlement Trusts*[4] in support of their contention that the Court can sanction a sale even if all the beneficiaries *sui juris* objected. The headnote of that case reads:—

"Where, in the case of a trust for sale, 'any requisite consent cannot be obtained,' because the person from whom it must be obtained refuses it, the Court, under s. 30 of the Law of Property Act, 1925, and s. 57 of the Trustees Act, 1925, can direct the trustees for sale to sell."

The *Beale's case*[4] can be distinguished from the present case in that in the former case there was a trust for sale whereas in the present case the trustees are specifically prohibited by the will from selling immovable property.

I find that in the cases that were cited to me during the course of this hearing the trustees and the beneficiaries had combined together to apply to the Court for approval of a compromise, scheme or transaction. I am not aware of any case, nor has one been cited to me, where the trustees have come to the Court for the approval of a compromise, scheme for sale, in the face of opposition by a majority of the beneficiaries.

I think that in the present case, where practically all the defendants, who represent a majority of the income beneficiaries, and Mr. Okell, who represents the corpus beneficiaries, are against the sale of the Trust Property, I should not approve the Agreement.

Then there is the question of whether the sale price of $2,000,000 is adequate. In my opinion the objection of the defendants and Mr. Okell as set out in para. (B) (ii) above is a valid one. I am not satisfied that the sale price of $2,000,000 is adequate.

Another unsatisfactory feature of the Agreement is that the Estate will not be getting any interest from the Company for part of the purchase money which will be outstanding for seven years. During the course of the hearing, however, the plaintiffs informed the Court that the Company was willing to pay interest, as much as 10%, on the balance outstanding.

The result, therefore, is that I am unable to approve the Agreement.

Order accordingly.

Solicitors: *Rodyk & Davidson; Drew & Napier; Sisson & Delay; Braddell Bros.*

TEO PENG CHOW & ORS. v. PUBLIC PROSECUTOR

[A. Cr. J. (Buhagiar J.) January 18, 1957]

[J. B. — Criminal Appeal No. 40 of 1956]

Societies Ordinance, 1949, s. 9 — "Office-bearers" of an unlawful society — "Assisting in its management" — Not an essential ingredient in a charge under s. 10 — Societies (Registration) Rules, 1953, rr. 3 & 6.

Criminal Procedure Code (Cap. 6), s. 156 — Charge not duly amended — Appellant misled — Conviction set aside — Re-trial.

It is not an essential ingredient to an offence alleged to be committed by "office-bearers" of an unlawful society against the provisions of section 10 of the Societies Ordinance, 1949, that they "had assisted in the management of that unlawful Society".

Where, therefore, the charge against the appellants alleged that they, as office-bearers of an unlawful society, assisted in its management, was not duly amended at the close of the prosecution's case, and the appellants were convicted, the conviction was set aside.

MAGISTRATE'S CRIMINAL APPEAL.

The following statement of facts is taken substantially from the judgment of Buhagiar J.: On December 22, 1955, the Assistant Registrar of Societies, Malacca and Johore, received an application from the Min Lok Club for the registration of that club as a society under the Societies Ordinance, 1949; the application was signed by the three appellants as office-bearers. The receipt of this application was acknowledged on December 23, 1955 and a letter was also sent to the applicants drawing their attention to rule 6(2) and (3) of the Societies Rules, 1953, and section 9 of the Societies Ordinance, 1949. The club was eventually refused registration on September 1, 1956; but on February 11, 1956, a raid was carried out by the police on the premises of the said club where various persons were found occupied in the game of mahjong, others were seated round a writing table; at least one of the persons present tried to escape. The three appellants were not amongst those present. Certain documents were also found and from Exhibit P. 7 it appears that the number of members had increased from 15 on the date of application for registration to 54 on the January 28, 1956.

Omar Salleh for the appellants.

Bahaudin bin Md. Yaacob (Federal Counsel) for the respondent.

Buhagiar J.: — In this case the three appellants were charged as follows:—

"That you on or about 11.2.56 at No. 40, Main Road Senai New Village, Kulai, in the State of Johore, being Office Bearers of Unlawful Society to wit the MIN LOK CLUB, (did assist in the management of the abovesaid Unlawful Society) and thereby committed an offence punishable under Section 10 of Ordinance No. 28/1949."

There was also an alternative charge with which it is not necessary to deal.

At the close of the case for the prosecution the defendants submitted that there was no case to answer as there was no evidence to show that the accused managed or assisted in the management of the society. The defendants were called upon to make their defence and the three alternative courses were explained to